

JUN 28 2007

Application No.: 10/721,154

Docket No.: JCLA10379-R

REMARKSPresent Status of the Application

The Office Action rejected claims 1, 6-8, 10-13, 18-20, 22-25, 30-32, 36, and 41-43 under 35 USC 102 (e) as being anticipated by Crocker et al. (Crocker) US Pub. No. 2005/0009537.

Discussion of the claim rejection under 35 USC 102

The Office Action rejected claims 1, 6-8, 10-13, 18-20, 22-25, 30-32, 36, and 41-43 under 35 USC 102 (e) as being anticipated by Crocker et al. (Crocker) US Pub. No. 2005/0009537.

In response thereto, Applicants hereby traverse these rejections, and submit that Crocker does not qualify as a prior art of the present application.

The basis for the rejections made in this Office Action is 35 USC 102 (e), which recites:

A person shall be entitled to a patent unless:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

JUN 28 2007

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Docket No.: JCLA10379-R

The present application was filed on November 24, 2003 in the United States. Crocker was filed on January 16, 2004.

According to MPEP 706.02(f) Rejection Under 35 U.S.C. 102(e), "a publication and patent of a 35 U.S.C. 111 (a) application, which claims benefit under 35 U.S.C. 119 (e) to a prior U.S. provisional application or claims the benefit under 35 U.S.C. 120 of a prior nonprovisional application, would be accorded the earlier filing date as its prior art date under 35 U.S.C. 102 (e), assuming the earlier-filed application has proper support for the subject matter as required by 35 U.S.C. 119 (e) or 120.

However, the related U.S. provisional Application 60/486,684 filed on July 11, 2003 is not the earlier-filed application, because Crocker' US Pub. No. 2005/0009537 did not claim the priority benefit of provisional Application 60/486,684. In the Oath or Declaration of the Crocker application, it clearly indicated that no priority under 35 U.S.C. 119(e) is claimed, which can be obtained in PAIR service of USPTO. See below attached image copied from the Oath or Declaration of the Crocker application.

Application No.: 10/721,154

Docket No.: JCLA10379-R

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

Provisional Application Serial No.:	
Provisional Application Filing Date:	

I hereby claim the priority benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56(a) which is material to the patentability of this application and which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Prior U.S. Application(s):

☒ no such application(s) filed
☐ such application(s) identified as follows:

Application No.	Filing Date (MM/DD/YYYY)	Status (Patented, Pending, Abandoned)

Furthermore, in the section of REFERENCE(S) TO RELATED APPLICATION(S) in the Crocker, it indicated that:

[0001] This application is related to a co-pending application entitled "METHOD AND APPARATUS FOR FACILITATING A PTT SESSION INITIATION USING AN IP-BASED PROTOCOL," filed on even date herewith, assigned to the assignee of the present application, and hereby incorporated by reference.

[0002] This application is related to a provisional application, Ser. No. 60/486684, entitled "WIRELESS COMMUNICATIONS NETWORK AND METHOD FOR ENABLING WIRELESS PRESENCE-BASED SERVICES," filed Jul. 11, 2003.

[0003] This application is related to a provisional application, Ser. No. 60/527603,

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JUN 28 2007

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Application No.: 10/721,154

Docket No.: JCLA10379-R

entitled "METHOD AND APPARATUS REDUCING PTT CALL SETUP DELAYS,"
filed Dec. 5, 2003.

In addition, the inventors of the provisional application, Ser. No. 60/486684 are Oprescu-Surcobe, Valentin et al., which can be obtained in PAIR service of USPTO. None of the inventors is the same as the Crocker's. The inventorship of the Crocker is different from the aforesaid provisional application.

As such, Crocker is not an eligible reference for anticipating the claimed invention.

Therefore, any rejection relying upon Crocker in order to arrive at the claimed invention should be withdrawn.

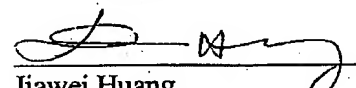
CONCLUSION

For at least the foregoing reasons, it is believed that all the pending claims 1, 6-8, 10-13, 18-20, 22-25, 30-32, 36, and 41-43 of the present application patently define over the prior art and are in proper condition for allowance. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

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Respectfully submitted,
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